

**In the United States District Court
For the Western District of Virginia
Harrisonburg Division**

JOANNE HARRIS and JESSICA DUFF, and
CHRISTY BERGHOFF and VICTORIA KIDD,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

JANET M. RAINEY, in her official capacity as
State Registrar of Vital Records; THOMAS E.
ROBERTS, in his official capacity as Staunton
Circuit Court Clerk,

Defendants.

No. 5:13-cv-00077

**CONSENT MOTION TO SUSPEND BRIEFING AND ORAL ARGUMENT
IN CONTEMPLATION OF STIPULATION OF DISMISSAL**

The plaintiffs (the “*Harris* class”), by counsel, respectfully request that the Court suspend briefing and oral argument on Plaintiffs’ Motion to Lift the Stay and Enter Judgment and Defendants’ Motions to Dismiss. In support of this Motion, plaintiffs state as follows:

1. On March 31, 2014, the Court stayed proceedings in this case pending the decision of the U.S. Court of Appeals for the Fourth Circuit in *Bostic v. Schaefer*, No. 14-1167 (“*Bostic*”), in which appeal the *Harris* class had intervened. (Dkt. #138.) On July 28, 2014, the Fourth Circuit ruled in favor of the appellees and the *Harris* class, holding that Virginia’s laws prohibiting the marriage of same-sex couples, and the recognition of such marriages from other jurisdictions, were unconstitutional. *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014). On August 20, 2014, the U.S. Supreme Court stayed the Fourth Circuit mandate in *Bostic* pending the

disposition of any petitions for *certiorari*. *McQuigg v. Bostic*, 189 L.Ed.2d 884 (2014). On October 6, 2014, the Supreme Court denied all three petitions for *certiorari* filed in the case. *Schaefer v. Bostic*, 83 U.S.L.W. 3189 (2014); *McQuigg v. Bostic*, 83 U.S.L.W. 3189 (2014); *Rainey v. Bostic*, 2014 83 U.S.L.W. 3189 (2014). The Fourth Circuit mandate issued the same day.

2. On October 16, 2014, the *Harris* class filed a Motion to Lift the Stay and Enter Judgment in this Court. (Dkt. #140.) On October 29, 2014, defendant Roberts and defendant Rainey each filed a Motion to Dismiss (Dkt. #142, 144), and a brief in support of their Motions to Dismiss and in opposition to the *Harris* class's Motion to Lift the Stay and Enter Judgment (Dkt. #143, 145.)

3. On November 11, 2014, this Court granted a consent motion to extend the time for plaintiffs to file a consolidated reply in support of their motion and response to defendants' cross-motions until November 19, 2014.

4. Oral argument on both motions is currently scheduled for December 11, 2014.

5. Counsel for the *Harris* class and for Rainey have since conferred in a good faith effort to resolve all remaining claims by the *Harris* class in this case and in *Bostic*, including any outstanding claims against Defendant Roberts. Acknowledging further the legal costs and expense associated with litigating these issues, Rainey and the *Harris* class have agreed to resolve their differences through a proposed Consent Order to be submitted to Judge Wright Allen in *Bostic v. Rainey*, No. 2:13cv395 (E.D.Va.). A copy of that proposed Consent Order is attached as Exhibit A.

6. Counsel for the *Harris* Class and Rainey intend to submit the proposed Consent Order to Judge Wright Allen. Once the Consent Order is entered in *Bostic*, the parties intend to submit to this Court a stipulation of dismissal pursuant to Federal Rule of Civil Procedure 41(b).

7. In the event that the Consent Order is denied in *Bostic*, the parties will inform this Court and propose a schedule for continuing to brief the pending motions.

8. Plaintiffs' counsel has consulted with counsel for each of the defendants, both of whom consent to the granting of this Motion.

9. Counsel are available upon the Court's request to answer any questions about their proposed resolution of this matter.

For the foregoing reasons, the *Harris* class respectfully requests that the Court suspend briefing and oral argument on Plaintiffs' Motion to Lift the Stay and Enter Judgment and Defendants' Motions to Dismiss.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of November, 2014, I effected service upon counsel for Defendants by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system.

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November 14, 2014

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